IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.930 OF 2002

Diwana @ Settu .. Appellant

-Vs-

State
rep. by the Inspector of Police
Kalambur Police Station
Kalambur .. Respondent

This criminal appeal is preferred under Section 374 of Cr.P.C. against the judgment of the learned Additional Sessions Judge-cum-Chief Judicial Magistrate, Tiruvannamalai made in S.C.No.84 of 2001 dated 18.01.2002.

!For Appellant : Mr.V.Murali

^For Respondent : Mr.V.Jaya Prakash Narayan,
Govt. Advocate (Crl. side)

:JUDGMENT

The sole accused in a case of murder, wherein he was found guilty under Section 304(ii), 323 I.P.C. and 25(1)(a) of Indian Arms Act and sentenced to undergo R.I. for five years under Section 304(ii) I.P.C. and three months S.I. under Section 323 I.P.C. and six months R.I. under Section 25(1)(a) of Indian Arms Act has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be stated thus:

a) The accused, the deceased and the injured belonged to Narikuravar community. On 17.10.2000 at about 3.00 p.m., they along with others assembled to attend the funeral ceremonies of one Echakattan in front of his house at their colony. The wife of the accused, namely P.W.4, Sudha, as per the customary practice, began to dance. The same was objected to by the accused, since he felt that it was not a decent one. P.w.2, Babu, the father of P.W.4 questioned the accused, which resulted in a wordy quarrel between them. The accused assaulted P.W.2 and kicked him. Further, the accused proceeded to his house situated nearby, came with a country gun and fired at P.W.2 saying the following words: nla; ghg[cd;id ,e;j Jg;ghf;fpahy; Rl;L bfhiy bra;jhy;jhd; vdf;F epk;kjp.

P.W.2 made his attempt to escape. At that point of time, the gunshot hit upon one Manohari, the deceased, who was standing just behind P.W.2 and she fell down unconsciously. The accused fled away from the scene of occurrence with the weapon.

b) P.W.1, Ponnaiyan, the son of the deceased and his father immediately took her to Government Hospital, Porur for treatment. P.w.10 Dr. Jeyaprakash medically examined her and treated her. A copy of the Accident Register is marked as Ex.P.10. In Ex.P.10 he has clearly stated that he has noticed multiple pellet injuries over the left side of chest and left side of abdomen with a size of + x + cm. Subsequently, she was taken to Government Pentland Hospital, Vellore for further treatment. P.w.11 Dr.Naresh Babu attached to the said hospital admitted her as inpatient in the hospital.

c) P.W.14, Sekar, Sub Inspector of Police, Kalambur on receipt of a phone message from P.W.1 at about 9.00 p.m. on 17.10.2000 rushed to the Government Pentland Hospital, Vellore. He could not record the statement from the victim, since she was unconscious. He recorded the statement from P.W.1, which was marked as Ex.P.1. On the strength of the same, he registered a case at Kalambur Police Station in Crime No.227/2000 under Sections 307, 323, 286 I.P.C. r/w 25(1)(a) of Indian Arms Act at about 2.30 a.m. on 18.10.2000. Ex.P.20, the express F.I.R. was despatched to the concerned Judicial Magistrate Court, while the copies were sent to higher officials. P.W.15, Gopal, Inspector of Police, Arni Town on receipt of F.I.R. took up investigation, proceeded to the site of occurrence, made an inspection and prepared Ex.P.6 Observation mahazar in the presence of two witnesses and Ex.P.21 rough sketch. He examined the witnesses and recorded their statements.

d) P.W.5. Balasubramanian, V.A.O of Kasthambadi Village along with his village assistant came to Kalambur Police Station and produced the accused before P.W.15 at about 9.00 a.m. on 18.10.2000. P.W.5 also handed over to P.W.15 the confessional statement Ex.P.2 given by the accused and recorded by P.w.5. The accused was arrested by the Investigating Officer. The appellant/accused volunteered to give a confessional statement before the Investigating Officer in the presence of P.W.5 and his assistant. The admissible portion of the confessional statement was marked as Ex.P.3. Pursuant to the confessional statement, the accused took the Investigating Officer and the witnesses and produced the country made gun, namely M.O.1 from the bushes. The same was recovered under a mahazar Ex.P.4 at about 10.30 a.m. in the presence of the same witnesses. The accused also took them to his house and produced a bag with three zips, namely, M.O.2, M.O.3, Tarpaulin bag, M.O.4, a small eversilver tiffen box with black coloured explosive powder, M.O.5, the head portions of eversilver spoons-2 in number, M.O.6, an iron rod in a small bag, M.O.7, Aluminium box with pellets, M.O.8, glass bottle with pellets and M.O.9, coconut fibre threads. The said M.O.2 to M.O.9 were recovered under mahazar Ex.P.5 in the presence of the same witnesses. The accused was sent to the court for remand. The seized materials were also despatched to the concerned court.

e) On 18.10.2000, P.W.15 proceeded to Government Pentland Hospital, Vellore and received the death intimation. P.W.15 converted the case into one for Section 302 I.P.C. and the altered F.I.R. under Ex.P.7 was sent to Court. The Investigating Officer conducted inquest in the presence of Panchayatars and witnesses and prepared report under Ex.P.23. On requisition

from the Investigating Officer through P.w.8, Sethurathinam, Head constable, P.w.12, Dr.Vasanthi Chandran conducted autopsy on the dead body on 19.10.2000 at about 2.00 p.m. P.W.12 found the following external and internal injuries:

"Body of well built female lies supine. No bony injuries. Hyoid intact. About 150-200 circular tattoo spots about , mm in drain over left side of chest and left side of upper abdomen. Base blackened. Surrounding skin congested. Underlying sub cutaneous tissue ecchymosed. All internal visceral pale in section. Blood stained fluid in peritoneal cavity. Multiple haemorrhagic circular spots over wall of stomach. Gun shot pellets removed from stomach walls. 10 circular haemorrhagic spots over small intestine. Gun shot pellets removed from intestinal wall. Other viscera normal in position and size."

The post-mortem certificate was marked as Ex.P.14. P.W.12 has opined that the deceased would appear to have died of shock and haemorrhage due to injury to stomach and intestine due to gun shot wounds 15-25 hours prior to post-mortem.

f) On requisition by the Investigating Officer under Exs.P.15 and P.16, the concerned Judicial Magistrate Court sent all the material objects along with a covering letters Exs.P.17 and P.18 to the Assistant Director of Ballistics, Forensic Science Department, Chennai-4. P. w.16, Ramaiya, the Expert, after examination of the said items and materials, has given a report under Ex.P.12. P.W.15 received the sanction order, Ex.P.24 from the District Collector for prosecuting the accused under the Indian Arms Act. On completion of the investigation, The Investigating Officer filed a charge sheet on 19.1.2001 against the accused.

3. In order to prove the charges levelled against the accused, the prosecution examined 16 witnesses and marked 24 exhibits and 10 M.Os. The accused was questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false. No defence witnesses were examined. After hearing the rival submissions and scrutiny of the materials available, the trial court found the accused guilty under Sections 304(II), 323 I.P.C. and 25(1)(a) of Indian Arms Act and sentenced to undergo imprisonment as stated supra.

4. Advancing his arguments for the appellant, the learned counsel inter-alia made following submissions:

Even as per the prosecution case, there was a wordy quarrel between the accused and P.W.2 at the time of occurrence, which resulted in commotion. Some of the witnesses, who were examined by the prosecution to prove the guilt of the accused, were close relatives. No independent witnesses were available at that time and no one was examined. There was an inordinate delay in lodging a complaint, which would cast a strong doubt in the prosecution case. Even assuming that the facts of the prosecution were proved, the act of the accused was due to sudden provocation which was neither intentional nor premeditated. It is further contended that if the Court finds that the accused/ appellant is entitled for acquittal in view of the discrepant evidence adduced by prosecution and comes to a conclusion that the prosecution has not proved its case, the punishment awarded by the trial court, which was excessive, has got to be reduced.

5. In answering to the above contentions of the appellant's side, the learned Government Advocate would urge that the prosecution has proved its case beyond reasonable doubt. The prosecution has examined P.W.1, who was not

only the eyewitness to the occurrence, but was the son of the deceased; that it is pertinent to point out that P.W.2, who is the father-in-law of the accused, has also sustained injury at the time of occurrence of the act committed by the accused; that P.W.4 is none else the wife of the accused; that apart from the said evidence, the prosecution has marched P.w.3, who has also spoken about the occurrence; that the medical evidence was thoroughly corroborated the ocular evidence adduced through P.ws.1 to 4; that added to the above evidence, the prosecution has also relied on the recovery of the weapon, namely, M.O.1, country made gun pursuant to the confessional statement given by the accused; that the said fact has also been proved through the evidence of P.W.5, V.A.O.; that under the stated circumstances, it would be futile on the part of the appellant's side to state that the case has not been proved; that the prosecution has clearly proved the case beyond all reasonable doubt; that the lower court was perfectly correct in finding the accused guilty under Sections 30 4(II), 323 I.P.C. and Section 25(1)(a) of Indian Arms Act and hence, the judgment of the trial court has got to be affirmed.

6. After careful consideration of the rival submissions and close scrutiny of the materials available, the Court is unable to agree with all or any one of the contentions put forth by the appellant's side. On the date of occurrence, namely, 17.10.2000 at about 3.00 p.m., the accused, his wife P.W.4, his father-in-law P.W.2, P.W.1 and P.W.3 and others assembled to attend the funeral ceremony of one Echakattan of their community at their colony. From the evidence, it would be clear that when P.w.4 began to dance as per the customary practice, the same was objected to by the accused. This objection was questioned by P.w.2, the father of P.W.4. Enraged over the same, the accused kicked his father-in-law. Not satisfied with the same, he went to his house, took M.O.1 country made gun and shot at him. But, in his attempt to escape, P.W.2 bent his body and the deceased, who stood behind P.W.2, sustained pellet injury. The deceased Manohari was taken to hospital where she was treated by P.w.10 Doctor and accident register has been given in that regard. For further treatment, she was taken to Government Pentland Hospital, Vellore where she was treated by P.w.11 . It is not in dispute that the deceased Manohari, who sustained injury, succumbed, when she was under treatment.

7. On receipt of requisition by the Investigating Officer, P.W.12 Doctor conducted Autopsy on the dead body of Manohari and has given post-mortem certificate, which was marked as Ex.P.14, wherein the injuries were narrated as stated above. Hence, it is quite evident that the said Manohari died only due to pellet injury caused by the accused. Apart from that minor injuries were caused to P.w.2 at the time of occurrence. In the instant case, the prosecution has examined not only P.W.1, an eyewitness and P.W.3, but also P.W.2, the father-in-law and P.W.4, the wife of the appellant. A careful scrutiny of the evidence of the above witnesses and in particular P.Ws.2 and 4 would clearly reveal that they have given cogent, acceptable and convincing reasons. The appellant is unable to show any reason or circumstance why the father-in-law and the wife of the accused should come to court of law to depose against the accused, and hence, this Court has to give necessary importance and significance to their evidence.

8. As rightly pointed out by the learned Government Advocate, the medical evidence adduced through Doctors and their certificates has thoroughly corroborated the ocular evidence. Apart from the above, the prosecution has

relied on the recovery of M.O.1, country made gun, which was used by the accused at the time of alleged occurrence and the same was recovered pursuant to the confessional statement given by the accused. The evidence of P.W.5, V.A.O. in that regard is intact despite cross examination. In view of the above evidence, without any hesitation it has got to be held that due to sudden provocation, the accused attempted at the life of P.W.2 and by his act he has caused the death of the deceased Manohari. It is a fit case where the concept of transfer of malice under Section 301 I.P.C. has got to be applied strictly. Hence, the lower court was perfectly correct in coming to a conclusion that this case would fall under Section 304(II) I.P.C. and not under Section 302 I.P.C. and there was evidence for Section 323 I.P.C. and Section 25(1)(a) of Indian Arms Act. Hence, this Court without any hesitation has to affirm the judgment of the trial court as to the conviction rendered.
9. Coming to the question of sentence, the trial court has awarded 5 years R.I. under Section 304(II). The occurrence has taken place due to sudden provocation. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that awarding punishment of 4 years R.I. under Section 304(II) I.P.C would meet the ends of justice. Accordingly, the sentence imposed by the trial court on the appellant under Section 304(II) I.P.C. is reduced to four years. In other respect, the judgment of the lower court is confirmed. With the above modification, this criminal appeal is dismissed.

Index : Yes
Internet : Yes

vvk
To
1. The Addl. Sessions Judge-cum-Chief Judicial Magistrate,
Tiruvannamalai

2. The Principal Sessions Judge, Tiruvannamalai

3. The Superintendent, Central Prison, Vellore

4. The Public Prosecutor, High Court, Madras

5. The Dy. Inspector General of Police, Chennai-4

6. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Crl. Side)
High Court, Madras

7. The Inspector of Police,
Kalambur Police Station,Kalambur